

NOT INCLUDED IN  
BOUND VOLUMES

PHG  
Ebensburg, PA

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GRANE HEALTHCARE CO. and/or EBENSBURG  
CARE CENTER LLC d/b/a CAMBRIA CARE  
CENTER, a single employer,

and

Case 6-CA-36791

LOCAL UNION NO. 1305, PROFESSIONAL AND  
PUBLIC SERVICE EMPLOYEES OF CAMBRIA  
COUNTY a/w THE LABORERS' INTERNATIONAL  
UNION OF NORTH AMERICA,

GRANE HEALTHCARE CO. and/or EBENSBURG  
CARE CENTER LLC d/b/a CAMBRIA CARE  
CENTER, a single employer,

and

Cases 6-CA-36803  
6-CA-36915

SEIU HEALTHCARE PENNSYLVANIA, CTW, CLC

ORDER DENYING MOTION FOR RECONSIDERATION

On November 30, 2011, the National Labor Relations Board issued a Decision and Order<sup>1</sup> in this proceeding, in which, among other things, it affirmed the judge's recommended dismissal of an allegation that the Respondent unlawfully refused to recognize Charging Party SEIU Healthcare Pennsylvania (SEIU) as the collective-bargaining representative of certain of its

employees following the Respondent's takeover of a healthcare facility from Cambria County, Pennsylvania. On December 28, 2011, SEIU filed a motion for reconsideration of the Board's dismissal of that allegation.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In footnote 3 of the Decision and Order, the Board declined to consider two matters raised in SEIU's exceptions to the judge's decision: (1) a "successorship" provision in SEIU's last memorandum of understanding with Cambria County requiring any purchaser to recognize SEIU and accept the memorandum of understanding; and (2) an October 2009 employee petition directed to the Cambria County Board of Commissioners demanding that the County ensure that its "contracts with employees" would be honored by any purchaser. The Board concluded that SEIU's contentions based on these documents improperly expanded the Acting General Counsel's theory of the alleged violation, which was that SEIU enjoyed a continuing presumption of majority status for collective-bargaining purposes as a matter of law, notwithstanding SEIU's limited "meet and discuss" relationship with the County under state law. In its motion, SEIU contends

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<sup>1</sup> 357 NLRB No. 123. Member Griffin did not participate in the underlying decision, but he agrees with the disposition of the instant motion.

that the Board's conclusion constitutes a departure from Board precedent.

Having duly considered the matter, we find that SEIU's motion fails to present "extraordinary circumstances" warranting reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations.

SEIU argues that, under *Illinois Bell Telephone Co.*, 179 NLRB 681, 684 fn. 13 (1969), petition for review denied sub nom. *System Council T-4, IBEW v. NLRB*, 446 F.2d 815 (7<sup>th</sup> Cir. 1971), cert. denied 404 U.S. 1059 (1972), its contract and petition-based contentions fall within the scope of the Acting General Counsel's presumption-based theory, and that the Board was therefore required to address those contentions. Although in *Illinois Bell* the Board may have taken a broad view of a charging party's ability to deviate from the General Counsel's theory of a case, we observe--without passing on the merits of that view--that the Board has never cited *Illinois Bell* on that point. Indeed, it appears that *Illinois Bell* is contrary to the clear weight of current Board precedent on this issue. Thus, in addition to the cases cited in fn. 3 of the Board's Decision and Order, see *Tradesmen International*, 351 NLRB 579, 579 fn. 2 (2007), and *Zurn/N.E.P.C.O.*, 329 NLRB 484 (1999) (Board refused to consider charging party's alternative "inherently destructive" theory where it would have enlarged or changed the

General Counsel's theory of the alleged 8(a)(3) violation). In those circumstances, we find no merit in SEIU's argument.

**IT IS ORDERED**, therefore, that the motion for reconsideration is denied.

Dated, Washington, D.C., February 2, 2012.

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Mark Gaston Pearce, Chairman

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Brian E. Hayes, Member

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Richard F. Griffin, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD